

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Temporary Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Extend Designation of the Lower Delaware River as a Special Protection Water

At its public meeting on September 27, 2006, the Delaware River Basin Commission (Commission) amended its Water Quality Regulations, Water Code and Comprehensive Plan by extending through September 2007 its temporary classification of the nontidal Lower Delaware River as Significant Resource Waters (SRW). The effect of temporary classification has been to make this portion of the main stem Delaware River and its drainage area subject to all applicable provisions of the Commission's Special Protection Waters regulations except those that depend for implementation upon the use of numeric values for existing water quality.

Dates

This final-form rulemaking is effective immediately and, unless extended by amendment, expires on September 30, 2007. An accompanying proposed rulemaking at 37 Pa.B. 4624 (August 25, 2007) proposes to extend this final-form rulemaking through May 15, 2008, pending a separate notice and comment rulemaking to permanently classify the Lower Delaware.

Supplementary Information

The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile (RM) 209.4 to the head of tide at Trenton, New Jersey, RM 144.4. The effect of temporary classification of the Lower Delaware as SRW has been to make this portion of the main stem Delaware River and its drainage area subject to all applicable provisions of the Commission's Special Protection Waters regulations, Section 3.10.3 A.2 of the Commission's Water Quality Regulations and its Water Code, except those that depend for implementation upon the use of numeric values for existing water quality.

Key provisions of the Special Protection Waters Regulations that continue to apply within the drainage area to the Lower Delaware River as a result of the Commission's extension of the SRW classification include the following: Section 3.10.3 A.2.c.1—3, in part requiring that no new or expanded wastewater discharges may be permitted in waters classified as Special Protection Waters until all nondischarge-load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility; Section 3.10.3 A.2.d.1—7, setting forth requirements for wastewater treatment facilities; and Section 3.10.3 A.2.e.1 and 2, conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by a nonpoint source pollution control plan approved by the Commission.

Previous register notices concerning designation of the Lower Delaware River as Special Protection Waters include notices published in the *Federal Register* at 69 FR 57008 (September 23, 2004) (proposed Special Protection Waters designation), 70 FR 48923 (August 22, 2005) (proposed extension through September 30, 2006) and 71 FR 48497 (August 21, 2006) (proposed extension through September 30, 2007); and in the *Pennsylvania Bulletin* at 34 Pa.B. 5557 (October 9, 2004) (proposed designation), 35 Pa.B. 5005 and 5013 (September 10, 2005) (temporary amendment and proposed extension) and 36 Pa.B. 4726 (August 26, 2006) (proposed extension). The proposed and final versions of the initial temporary designation, approved by Resolution No. 2005-2, and the subsequent extensions approved by Resolutions Nos. 2005-15 (extension through September 30, 2006) and 2006-22 (extension through September 30, 2007) were also published on the Commission's website, www.drbc.net. The final rules have been filed in accordance with Section 14.2(a) of the Delaware River Basin Compact, Pa. Acts of 1961, Act No. 268.

Further Information, Contacts:

Resolution No. 2005-2, temporarily amending the Water Quality Regulations, Water Code and Comprehensive Plan of the Commission by designating the Lower Delaware River a Special Protection Water, and Resolutions Nos. 2005-15 and 2006-22, extending the temporary amendment approved by Resolution No. 2005-2, are available on the Commission's website at www.drbc.net or upon request from the Delaware River Basin Commission, P. O. Box 7360, West Trenton, NJ 08628-0360. Maps depicting the designated area are also available on the website. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, (609) 883-9500, Ext. 203.

The final-form rulemaking temporarily amends the Section 3.10.3.A.2.g.6) of the Water Quality Regulations and Water Code by replacing the last paragraph of that section with the following:

Sections 3.10.3.A.2.g.2).b) and 3.10.3.A.2.g.6) shall expire on September 30, 2007, unless extended by amendment to this rule.

PAMELA M. BUSH,
Secretary

Fiscal Note: Fiscal Note 68-48 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.2. Comprehensive Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A (2007) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 (2007) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 07-1542. Filed for public inspection August 24, 2007, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; Tautog

The Fish and Boat Commission (Commission) amends Chapter 63 (relating to general fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The final-form rulemaking adding § 63.50 (relating to importation of tautog) is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendment is described in more detail under the summary of change.

E. Summary of Change

It has been brought to the attention of the Commission that tautog (*Tautoga onitis*), a marine fish common on hard bottom from Cape Cod to Delaware, are being harvested illegally on the Atlantic coast and being sold in the live fish markets in Philadelphia. The Commission encountered a similar situation in 1993 regarding the sale of sublegal size weakfish in this Commonwealth's fish markets that was subsequently addressed with a minimum size limit on weakfish being imported into this Commonwealth.

The New Jersey Division of Fish and Wildlife Marine Conservation Officers asked the Commission to implement a 14-inch minimum size limit on tautog that are imported into this Commonwealth. This restriction will minimize this Commonwealth's black market for sublegal size tautog. Accordingly, the Commission proposed a 14-inch minimum size limit on tautog that are imported into this Commonwealth. The Commission adds § 63.50 to read as set forth in the proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 37 Pa.B. 2694 (June 16, 2007). The Commission received one public comment from the Atlantic States Marine Fisheries Commission's Tautog Management Board supporting the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the regulation adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the regulation of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended by adding § 63.50 to read as set forth at 37 Pa.B. 2694.

(b) The Executive Director will submit this order and 37 Pa.B. 2694 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 37 Pa.B. 2694 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-194 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 07-1543. Filed for public inspection August 24, 2007, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 71]

School Bus Drivers

The Department of Transportation (Department), under the authority in 75 Pa.C.S. § 1509 (relating to qualifications for school bus driver endorsement), amends §§ 71.2 and 71.3 (relating to definitions; and physical examination) to read as set forth in Annex A.

Purpose of Chapter

The purpose of Chapter 71 (relating to school bus drivers) is to define more fully the requirements of 75 Pa.C.S. § 1509 by listing minimum medical requirements for school bus drivers.

Purpose of the Final-Form Rulemaking

The purpose of this final-form rulemaking is to allow chiropractors to administer the physical examination required for school bus drivers. Pennsylvania law requires a school bus driver to have a physical examination every year. According to Department regulations, the only health care providers who can perform physicals are licensed physicians, certified registered nurse practitioners or physician's assistants. The Pennsylvania Chiropractic Association requested chiropractors also be allowed to conduct physicals as part of the process of obtaining a driver's license.

Chiropractors are currently considered by health insurance companies to be portal of care practitioners. This means they are regarded as primary care physicians, permitted to furnish necessary patient care for health maintenance. They are also allowed, by Federal regulation, to conduct the medical examinations for commercial drivers required every 2 years by the Federal Highway Administration under Motor Carrier Safety regulations. Since the exclusion of chiropractors from the Department's list of health care providers is inconsistent with current health care practices and Federal regulations, chiropractors should be added to Chapter 71 as one of the providers who can give the school bus driver's physical examination.

Summary of Comments and Changes to the Final-Form Rulemaking

Public comment was received from the Pennsylvania Medical Society (PMS), the Pennsylvania Academy of Family Physicians Foundation, the American Osteopathic Association and the Pennsylvania Osteopathic Medical Association objecting to the inclusion of chiropractors as medical professionals authorized to conduct examinations required for the school bus driver endorsement. These organizations argue that chiropractors are not medically qualified to conduct the basic medical examination required under 75 Pa.C.S. (relating to Vehicle Code) (Vehicle Code). They argue that chiropractors lack the training and experience of physicians and doctors of osteopathy to make sophisticated diagnoses.

The objections overstate the sophistication of the basic medical examination required under the Vehicle Code. Moreover, this final-form rulemaking merely conforms the regulation to include the authorization of chiropractors to conduct the required examinations which has already been authorized in the 2004 amendments to the Vehicle Code enacted by the General Assembly and signed by the Governor.

Section 1509(b) of 75 Pa.C.S. does not set up a separate physical examination for school bus drivers; rather, that section requires that school bus drivers carry proof that they have passed the physical examination required of all drivers under 75 Pa.C.S. § 1508.1 (relating to physical examinations). The General Assembly amended 75 Pa.C.S. § 1508.1 to include chiropractors in the list of medical professional authorized to conduct the examination.

The comments of PMS suggest that additional disclaimer language be added to note that there are some symptoms and conditions that may be beyond the training and experience of chiropractors to diagnose. It should be noted that there may also be symptoms or conditions which are beyond the training and experience of physician assistants and nurse practitioners. And although the professional may typically work in some collaboration with physicians, the General Assembly has placed no

restriction on those professionals that the required examination must be given in collaboration with a physician. The Department declines to implicitly restrict the authority of chiropractors under 75 Pa.C.S. § 1508.1 by adopting the PMS suggested disclaimer.

The Independent Regulatory Review Commission (IRRC) commented that the new definition of "doctor of chiropractic medicine" differed from the definition of "chiropractor" in the Vehicle Code. It was recommended that the rulemaking be revised to conform verbatim to the definition of "chiropractor" in the Vehicle Code or be replaced by a reference to the statutory definition. The recommended change to reference the statutory definition of "chiropractor" has been made. This change should also resolve the concerns raised by the Chiropractic Fellowship of Pennsylvania that the definition in the proposed rulemaking unreasonably restricted the authority to conduct the examination to a subset of chiropractors. In response to this concern, the reference to "doctor of chiropractic medicine" in § 71.3 has also been changed to "chiropractor."

In addition, IRRC questioned the continued use of the term "school transportation physician" and suggested that it could be deleted. The Department believes that the authority of school districts to designate a specific medical practitioner to conduct the physical examination of school bus drivers should be retained. To address the concerns raised by IRRC, and to provide further clarification in the regulation, the Department included a definition of "physician" in the final-form rulemaking and amended the definition of "school transportation physician" to "school transportation medical practitioner" and included physicians, chiropractors, certified nurse practitioners and physician assistants as the medical professionals who could be so designated by a school district.

IRRC comments also noted that § 71.3(c) needed to be amended to include chiropractors in the list of practitioners in that section. That change has also been made.

Finally, Rosemary Chiavetta, Esquire, on behalf of the Pennsylvania Chiropractic Association, submitted comments supporting the rulemaking.

Persons and Entities Affected

This final-form rulemaking affects licensed school bus drivers or persons interested in becoming a school bus drivers and chiropractors.

Fiscal Impact

Implementation of this final-form rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. This final-form rulemaking will not impose additional costs on the medical community and may reduce costs by allowing applicants for a learner's permit to get their physical examination from their primary care physician.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 13, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 3145 (May 28, 2005), to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 1, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 2, 2007, and approved the final-form rulemaking.

Sunset Provisions

This final-form rulemaking is effective upon publication following appropriate evaluation of comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under the Vehicle Code. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about this final-form rulemaking is Chris A. Miller, Manager, Special Driver Programs, Department of Transportation, Bureau of Driver Licensing, 1101 S. Front Street, 3rd floor, Harrisburg, PA 17106, (717) 787-6453.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 71, are amended by amending §§ 71.2 and 71.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 4599 (August 18, 2007).)

Fiscal Note: Fiscal Note 18-402 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 71. SCHOOL BUS DRIVERS

§ 71.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified, by both the State Board of Nursing and the State Board of Medicine, in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

Chiropractor—A practitioner of chiropractic as defined in 75 Pa.C.S. § 1508.1(b) (relating to physical examinations).

Department—The Department of Transportation of the Commonwealth.

Driver's examination—An examination to establish the ability of a person to drive, maneuver and control a school bus with safety and knowledge of the laws and regulations relating to the operation of school buses.

Physical examination—An examination, including an eye examination, given to determine the physical and mental fitness of a person to drive a school bus safely.

Physician—A licensed physician as defined in § 83.2 (relating to definitions).

Physician assistant—A person certified by the State Board of Medicine to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

Pupil Transportation Section—The Pupil Transportation Section of the Bureau of Driver Licensing of the Department.

S endorsement—An endorsement which is added to a commercial driver's license and which authorizes the driver to operate a school bus.

School bus driver—A person who drives a school bus as defined in 75 Pa.C.S. § 102 (relating to definitions) or Chapter 171 (relating to school buses and school vehicles) except an owner or employee of an official inspection station driving the vehicle for the purpose of inspection.

School transportation medical practitioner—A licensed physician, physician assistant, certified registered nurse practitioner or chiropractor appointed or approved by a school board, or by the authorities responsible for operation of a private or parochial school. The same person may be appointed or approved as both school transportation medical practitioner and school medical practitioner.

§ 71.3. Physical examination.

(a) *General rule.* A physical examination shall be given by a school transportation medical practitioner, a physician, a chiropractor, a CRNP or a physician assistant:

* * * * *

(c) *Physical examination certificate.* The examining school transportation medical practitioner, physician, chiropractor, CRNP or physician assistant shall issue a certificate, valid for the ensuing year, to every driver who passes a physical examination.

* * * * *

[Pa.B. Doc. No. 07-1544. Filed for public inspection August 24, 2007, 9:00 a.m.]